



## **CIC | District of Columbia Corrections Information Council**

April 9, 2020

Mr. Michael Carvajal  
Director  
Federal Bureau of Prisons  
320 First Street NW  
Washington, DC 20534

Dear Director Carvajal:

There are approximately 4000 DC residents in the custody of the Bureau of Prisons (BOP), residing across 118 institutions nationwide.<sup>1</sup> Since the onset of the novel coronavirus pandemic, the CIC has been following the BOP's response intently, with growing concern about the conditions facing our residents in BOP facilities.

The CIC appreciates the BOP's responses to our questions about policy changes and their impact on our residents. We are encouraged by the news of the releases to home confinement last week, and Attorney General Barr's updated guidance widening the scope of individuals to be considered for release to home confinement.

We continue to have concerns about how that policy will be implemented, particularly as several of the factors in AG Barr's March 26 memo seem likely to significantly limit the number of individuals considered for release to home confinement. These limitations are not on the basis of the degree of health risk an individual is facing due to the pandemic, but on the basis of their underlying criminal convictions, the security level of their institution, or their score on the untested and problematic PATTERN risk assessment tool. DC offenders should be fairly considered for release to home confinement, and sufficient numbers of individuals throughout the BOP system should be released to allow for safe conditions for those who remain.

DC offenders in the BOP are uniquely situated, effectively state prisoners residing in the federal system. They tend to be serving longer sentences than other federal inmates, and they are more likely to be serving sentences for crimes of violence, because in every other state individuals convicted of crimes like robbery or assault serve their sentences in state prison. Some DC inmates are also impacted by indeterminate sentencing, which can mean that their custody

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<sup>1</sup> data as of April 1, 2020 provided by BOP.

level remains high in part due to a lengthy “back number”. If these factors outweigh individual health concerns in the BOP’s assessment, then DC residents are less likely to be released to home confinement, even if they have a high risk of susceptibility to the novel coronavirus.

Numerous experts have expressed concerns with the PATTERN tool.<sup>2</sup> As noted by the Leadership Conference on Civil and Human Rights, “[w]hen tools conflate the likelihood of arrest for any reason with risk to public safety, a large number of people will be labeled a threat without sufficient justification. Risk assessments that include minor offenses or technical violations in their definition of ‘risk’ will inflate risk scores and incarceration rates and exacerbate racial inequalities. In the context of COVID-19...this means a much higher risk of illness and of fatality.”

Ninety-six percent of the DC residents in BOP custody are African-American. As NIAID Director Dr. Anthony Fauci stated during a White House press briefing on April 8, 2020, “Unfortunately, when you look at the predisposing conditions that lead to a bad outcome with coronavirus — the things that get people into ICUs that require intubation and often lead to death, they are just those very comorbidities that are, unfortunately, disproportionately prevalent in the African American population.”<sup>3</sup> The CIC has received a number of emails from DC residents in BOP custody expressing fear for their safety due to underlying medical concerns such as diabetes, hypertension, and asthma – the exact underlying conditions Dr. Fauci indicated will make them particularly vulnerable to the coronavirus.

The CIC is in agreement with the Sentencing Project,<sup>4</sup> that the BOP should be considering first and foremost each person’s age, health, and susceptibility to the virus, and that these factors should not be overruled by a high PATTERN score. While the CIC recognizes that the BOP and the Justice Department have an obligation to protect public safety, this is balanced against the responsibility to care for individuals in your custody. During a public health emergency where the individuals in your custody are at risk of serious illness and death, this balancing cannot look like business as usual. The risk to individual safety is only increasing as the virus spreads more widely within facilities and to an increasing number of facilities.

The CIC urges the Bureau to consider the aforementioned nullifying impacts of the PATTERN score and the other factors in AG Barr’s memo to ensure that individuals with a

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<sup>2</sup> “Comment Letter to Department of Justice on PATTERN First Step Act” The Leadership Conference on Civil and Human Rights, 3 September 2019 <https://civilrights.org/resource/comment-letter-to-department-of-justice-on-pattern-first-step-act/>

<sup>3</sup> “Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing | April 7, 2020” <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-april-7-2020/>

<sup>4</sup> Quoted in “How Bill Barr’s COVID-19 Prisoner Release Plan Could Favor White People” The Marshall Project, 28 March 2020, <https://www.themarshallproject.org/2020/03/28/how-bill-barr-s-covid-19-prisoner-release-plan-could-favor-white-people>

higher risk for contracting the virus or underlying medical conditions that increase the likelihood of a severe case are not overlooked in assessments regarding release to home confinement.

Thank you.

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